

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TREMONT REALTY CAPITAL, INC.,

Plaintiff,

v.

PINNACLE GROUP, LLC, ADAMS
CANYON RANCH, LLC, JOHN LANG,
and MICHAEL GRADY,

Defendants.

and

Civil Action No. 04-11853-RGS

PINNACLE GROUP, LLC, ADAMS
CANYON RANCH, LLC, JOHN LANG,
and MICHAEL GRADY,

Counterclaim Plaintiffs,

v.

TREMONT REALTY CAPITAL, INC.,

Counterclaim Defendant.

and

PINNACLE GROUP, LLC, ADAMS
CANYON RANCH, LLC, JOHN LANG,
and MICHAEL GRADY,

Third-Party Plaintiffs,

v.

FORTIS ADVISORS, LLC,
TREMONT-FORTIS REALTY CAPITAL,
LLC, RUSSELL POSORSKE, RICHARD
C. GALLITTO AND DANIEL O. MEE

Third-Party Defendants.

THE THIRD PARTY DEFENDANTS' MOTION TO DISMISS
THE FIRST AMENDED THIRD-PARTY COMPLAINT

In accordance with Fed. R. Civ. P. 9(b), third-party defendants Fortis Advisors, LLC (“Fortis”), Tremont-Fortis Realty Capital, LLC (“Tremont-Fortis”), Russell Posorske (“Posorske”), Richard C. Gallitto (“Gallitto”) and Daniel O. Mee (“Mee”) (collectively the “Third-Party Defendants”) move to dismiss the First Amended Third-Party Complaint, dated April 15, 2005. This complaint rests upon fraud-based causes of action that are not supported by any allegations sufficient to meet the heightened pleading standards under Rule 9(b). Specifically, the Third-Party Complaint makes no allegations concerning who made any of the allegedly fraudulent representations, when they were allegedly made, or to whom they were allegedly made. Similarly, the Third-Party Complaint is devoid of any allegation that attempts to explain why these representations, if they were made, could be construed as fraudulent. As such, these causes of action are legally deficient, and should be dismissed. This motion is supported by a contemporaneously filed memorandum of law.

Wherefore, the Third-Party Defendants respectfully ask that this Court dismiss the First Amended Third-Party Complaint.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), the Third-Party Defendants respectfully request a hearing on its motion to dismiss, to be held in conjunction with a hearing on Tremont’s Motion To Dismiss Counts I, II, III and VI Of The First Amended Counterclaim.

FORTIS ADVISORS, LLC,
TREMONT-FORTIS REALTY CAPITAL,
LLC,
RUSSELL POSORSKE,
RICHARD C. GALLITTO AND
DANIEL O. MEE

By their attorneys,

/s/ Michael S. Day
James M. Wodarski, BBO# 627036
Michael S. Day, BBO # 656247
Joseph V. Cavanagh, BBO # 657671
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
One Financial Center
Boston, MA 02111
(617) 542-6000

Dated: June 20, 2005

Rule 7.1(A)(2) Certification

Pursuant to Local Rule 7.1(A)(2), counsel for the Third-Party Defendants certify that they have conferred with counsel for the Third Party Plaintiffs and attempted in good faith to resolve the issues surrounding the Third Party Plaintiffs' claims.

/s/ Michael S. Day
Michael S. Day

Certificate of Service

I certify that on this day I caused a true copy of this motion and accompanying memorandum to be served on the Third-Party Plaintiff's counsel of record, William J. Hunt, Clark, Hunt & Emery, 55 Cambridge Parkway, Cambridge, Massachusetts 02142, by first class mail.

Dated: June 20, 2005

/s/ Michael S. Day
Michael S. Day